

FILED

FEB 26 1996

Commission on  
Judicial Performance

STATE OF CALIFORNIA  
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING A JUDGE,  
No. 135.

NOTICE OF FORMAL PROCEEDINGS

To JUDGE JAMES C. McGUIRE, a judge of the San Bernardino County Superior Court, East Desert District, Morongo Basin, from July 14, 1989, to the present, and at all relevant times therein:

Preliminary investigation pursuant to California Rules of Court, rules 904 and 904.2, having been made, the Commission on Judicial Performance has concluded that formal proceedings should be instituted to inquire into the charges specified against you herein.

By the following allegations, you are charged with wilful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, improper action, and dereliction of duty within the meaning of Article VI, section 18 of the California Constitution providing for removal, censure, or public or private admonishment of a judge, to wit:

On December 16, 1993, Todd Swain and Marion Damiano-Nittoli, law enforcement officers of the National Park Service, appeared at the chambers of Municipal Court Judge Bert L. Swift

1 seeking the issuance of a search warrant. The search warrant and supporting affidavit specified that  
2 the premises to be searched were the residence of a Tony Soares, located at 82528 Quail Springs  
3 Road in Joshua Tree, and that the items to be seized were Native American artifacts allegedly stolen  
4 from Joshua Tree National Monument. Judge Swift reviewed the search warrant documents and  
5 informed the law enforcement officers that the premises described therein were owned by him and his  
6 wife, and that Tony Soares was his stepson. Because of this conflict of interest, Judge Swift brought  
7 the law enforcement officers and the search warrant documents to you at your chambers. Judge  
8 Swift turned the search warrant documents over to you for your decision and explained his conflict  
9 of interest.

10  
11 You reviewed the search warrant documents in the presence of Judge Swift and the law  
12 enforcement officers. Despite Judge Swift's conflict of interest, you allowed Judge Swift to remain  
13 in your chambers and to participate in the ensuing decision-making process regarding the search of  
14 the subject premises.

15  
16 As part of your decision-making process, you engaged Judge Swift and the law enforcement  
17 officers in discussions regarding the search warrant. You were informed by the law enforcement  
18 officers that they intended to serve the search warrant the following day. You discussed possible  
19 alternatives to executing the search warrant, such as a consent search. You raised the possibility that  
20 Judge Swift could consent to the search as an option to executing the search warrant. You raised  
21 the possibility of conducting a consent search that evening. You asked Judge Swift whether he  
22 would consent to a search of the subject premises and whether his stepson would consent. You,  
23 however, did not question Judge Swift to determine whether there was a factual basis for a lawful  
24 consent search, or any problem related thereto. You based the suggestion that Judge Swift could  
25 consent to the search, in part, on information obtained from prior lunches with Judge Swift. You  
26 participated in questioning the law enforcement officers regarding the basis of their knowledge as to  
27 the genuineness of the artifacts to be seized and the possible criminal consequences to Judge Swift's  
28 stepson.

1        These discussions became intimidating and a matter of concern to the law enforcement  
2 officers. You called Deputy District Attorney Linda Root to your chambers to advise the law  
3 enforcement officers regarding the propriety of a consent search. You, however, did not show the  
4 search warrant documents to Ms. Root. You did not inform Ms. Root that Judge Swift did not live  
5 on the subject premises.

6  
7        You discussed with Judge Swift and Deputy District Attorney Root the potential political  
8 consequences that a search of the subject premises might have on Judge Swift's reelection campaign.

9  
10       Despite finding probable cause to issue the search warrant, you decided not to do so.  
11 Instead, you allowed the law enforcement officers to follow your suggestion to proceed with a  
12 search by consent that evening. You gave the law enforcement officers your home telephone number  
13 and informed them that you would authorize the warrant over the phone if a problem were to arise.  
14 Prior to concluding the meeting in your chambers, you suggested to those present that they did not  
15 need to disclose what had just taken place. The law enforcement officers went to the subject  
16 premises to conduct the search that evening, accompanied by Judge Swift. The law enforcement  
17 officers seized some items, but, because they felt restricted by Judge Swift's presence, they limited  
18 the scope and duration of their search. Ultimately, the Office of the District Attorney for San  
19 Bernardino County declined to prosecute Judge Swift's stepson, Tony Soares, for any crime related  
20 to the seized items, primarily because Judge Swift's consent to search was invalid.

21  
22       YOU ARE HEREBY GIVEN NOTICE, pursuant to California Rules of Court, rule 905, that  
23 formal proceedings have been instituted and shall proceed in accordance with California Rules of  
24 Court, rules 901-922.

25  
26       Pursuant to California Rules of Court, rule 906, you have the right to file a written answer to  
27 the charges against you within fifteen (15) days after service of this notice upon you. An original and  
28 eleven (11) legible copies of the answer may be filed with the Commission on Judicial Performance,  
29 101 Howard Street, Suite 300, San Francisco, California 94105. The answer shall be verified and

1 shall conform in style to subdivision (c) of rule 15 of the Rules on Appeal. The notice of formal  
2 proceedings and answer shall constitute the pleading. No further pleadings shall be filed and no  
3 motion or demurrer shall be filed against any of the pleadings.

4  
5 This notice of formal proceedings may be amended pursuant to California Rules of Court,  
6 rule 911.

7  
8 BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

9  
10 DATE:

2/6/96

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12 CHAIRPERSON  
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FEB 26 1996

State of California  
Commission on Judicial Performance  
101 Howard Street, Suite 300  
San Francisco, CA 94105  
(415) 904-3650  
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FEB 27 1996

February 15, 1996

CONFIDENTIAL

Thomas R. Hudson, Esq.  
3602 Inland Empire Blvd.  
Suite B140  
Ontario, CA 91764

RE: Inquiry Concerning a Judge No. 135.

Dear Mr. Hudson:

As indicated in my letter to you of February 2, 1996, the commission has determined to proceed with the issuance of formal charges regarding the search warrant incident. A copy of the executed Notice of Formal Proceedings (Inquiry No. 135) is enclosed.

California Rules of Court, rule 905, subdivision (c), provides for personal service of the notice. However, if you are willing to accept service by mail on behalf of the judge, please so indicate by signing and returning the enclosed copy of this letter within five days.

Very truly yours,

Sei Shimoguchi  
Staff Counsel

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Enclosures

VIA CERTIFIED MAIL

I, Thomas R. Hudson, Esq., hereby acknowledge receipt of the copy of the Notice of Formal Proceedings in Inquiry Concerning a Judge No. 135 and agree to accept service of the Notice by mail.

Date

2/21/96

  
Thomas R. Hudson, Esq.